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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/797,598 | 03/11/2004 | Ingvar Sjoqvist | 19200-000033/US | 3900 |

7590 10/17/2008
HARNESS, DICKEY & PIERCE, P.L.C.
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Reston, VA 20195

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| EXAMINER |
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OLANIRAN, FATIMAT O

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| ART UNIT | PAPER NUMBER |
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2614

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| MAIL DATE | DELIVERY MODE |
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10/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|----------------------------------------|-----------------------------------------|--|
| Office Action Summary | Application No. 10/797,598 | Applicant(s) SJOQVIST, INGVAR | |
| | Examiner FATIMAT O. OLANIRAN | Art Unit 2614 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 6/17/2008 have been fully considered but they are not persuasive.

Examiner respectfully disagrees with applicant's argument with regards to the limitations "...pretensioned by a spring..."

The purpose of the headband of Gorike is to provide an adjustable fit (col. 4). This implies that the head band will provide a snug fit and in order to do so they will have to provide pressure onto the ear of the user. Examiner argues that to one of ordinary skill headbands that do not slip from the user heads apply a slight pressure to the user ears or the point of contact on a user's head.

Therefore the combination of Redmer et al (6920228), Sato (6721433) and Gorike (4571746) as presented by Examiner read on applicant's limitations.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-4, 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Redmer et al (6920228) in view of Sato (6721433) in further view of Gorike (4571746).

Claim 1 Redmer discloses, ear protector arranged to protect a first ear and a second ear from loud noise, comprising a bow which has a first part connecting a second part and a third part, (Fig. 3 12: first part, 50: second and third part)

said second part comprising at least a first contact point to be applied in proximity to said first ear (Fig.3 part 50) said third part comprising at least a first contact point to be applied in proximity to said second ear (Fig. 3 part: 50),

characterized in that

the ear protector comprises a fourth part (Fig. 3 part: 52) on said second part and comprising a first ear plug (Fig. 3 part 54) which fits into said first ear to suppress noise (col. 4 line 31-34),

the ear protector comprises a fifth part (Fig. 3 part: 52) on said third part and comprising a second ear plug (Fig. 3 part 54) which fits into said second ear to suppress noise (col. 4 line 31-34)

said fourth part is designed to be able to assume a first position in which said ear plug is in a position outside said first ear (col. 3 line 25-28, when headset is removed from

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head), and a second position in which said ear plug is in a position which fits in said ear in order thereby to suppress noise (col. 4 line 31-34).

said fifth part is designed to be able to assume a first position in which said ear plug is in a position outside said second ear (col. 3 line 25-28), and a second position in which said ear plug is in a position in said second ear in order thereby to suppress noise (col. 4 line 31-34).

Redmer does not disclose part arranged rotatably.

Sato discloses part arranged rotatably (abstract line 11-14, Fig. 4, part 15 and 17).

Therefore it would be obvious one ordinarily skilled in the art at the time the invention was made to modify the ear-clip and ear buds of Redmer with the rotational feature of Sato so that the user could release the ear buds from the ears temporarily one at a time or both at the same time while the headset is still on the head as taught by Sato (col. 2 line 21-23).

Redmer in view of Sato do not explicitly disclose said fourth and fifth parts are pretensioned by a spring so that, in said second position, they exert a pressure inwards towards said auditory canal.

Gorike discloses said part pretensioned by a spring (col. 4 line 4-6, Fig. 1 central parts 3 and 4). Therefore it would be obvious to one ordinarily skilled in the art at the time the invention was made to modify Redmer's headband in view of Sato with the spring of Gorike in order to have a more flexible headband.

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Claim 2 analyzed with respect to claim 1, Redmer discloses said fourth and fifth parts fit into a respective auditory canal of the respective said ear (col. 4 line 31-32, 37-39).

Claim 3 analyzed with respect to claim 1, Redmer discloses, said second and third parts are arranged to pass round the pinna of an ear (Fig. 2 col. 3 line 30-32) and in this way hold said ear protector securely in a position such that said fourth and fifth parts, in the respective second position, fit said ear plugs into said auditory canals (col. 4 line 31-32, 37-39).

Claim 4 analyzed with respect to claim 1, Redmer discloses, said first part so that said second and third parts press towards a position in proximity to said ears (col. 3 line 23-32) in order to hold said ear protector securely in a position such that said fourth and fifth parts, in the respective second position, fit said ear plugs into said auditory canals (col. 4 line 31-32, 37-39). Redmer in view of Sato does not disclose said part pretensioned by a spring.

Gorike discloses said part pretensioned by a spring (col. 4 line 4-6, Fig. 1 central parts 3 and 4). Therefore it would be obvious to one ordinarily skilled in the art at the time the invention was made to modify Redmer's headband in view of Sato with the spring of Gorike in order to have a more flexible headband.

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Claim 6 analyzed with respect to claim 1, Redmer in view of Sato discloses, said fourth and fifth parts in said second position so as to assume said first position under a slight pressure (Redmer; col. 3 line 23-32). Redmer in view of Sato does not disclose said fourth part and fifth part are pretensioned by a spring in said second position.

Gorike discloses said parts are pretensioned by a spring in said second position (col. 4 line 4-10, first and second positions: headphones on and off a user's head). Therefore it would be obvious to one ordinarily skilled in the art at the time the invention was made to modify Redmer's headband in view of Sato with the spring of Gorike in order to have a more flexible headband.

Claim 7 analyzed with respect to claim 1, Redmer discloses, in which said ear protector comprises a radio, mobile telephone, pager or other electronic equipment (col. 4 line 58-60) and devices for conveying sound or a signal in an audible manner through said ear plugs (col. 3 line 66-67 and col. 4 line 1-2).

Claim 8 analyzed with respect to claim 1, Redmer discloses, in which said ear plugs can be exchanged from said fourth and fifth parts (col. 4 line 31-33).

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FATIMAT O. OLANIRAN whose telephone number is (571)270-3437. The examiner can normally be reached on M-F 10:00-6 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FO

/Vivian Chin/
Supervisory Patent Examiner, Art Unit 2615